| Case 9:19-cv-01438-MAD-TWD Document                        | 1 Filed 11/20/19 Page 1 of 43 U.S. DISTRICT COURT - N.D. OF N.Y.         |
|--|--|
| UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF NEW YORK | NOV <b>2 0</b> 2019  |
| MIGUEL DIAZ  | ATO'CLOCK_<br>John M. Domurad, Clerk - Syracuse                          |
| Plaintiff(s),  | COMPLAINT<br>(Pro Se Prisoner)   |
| V.   | Case No. 9:19-cv-1438 (LEK/CFH) (Assigned by Clerk's Office upon filing) |
| DOCCS OFFIERS & EMPLOYEES                                  | Jury Demand  |

Defendant(s).

Yes

□ No

#### NOTICE

The public can access electronic court files. For privacy and security reasons, papers filed with the court should therefore not contain: an individual's social security number, taxpayer identification number, or birth date; the name of a person known to be a minor; or a financial account number. A filing may include only: the last four digits of a social security number or taxpayeridentification number; the year of an individual's birth; a minor's initials; and the last four digits of a financial account number. See Fed. R. Civ. P. 5.2.

#### I. LEGAL BASIS FOR COMPLAINT

This is a civil action seeking relief and/or damages to defend and protect the rights guaranteed by the Constitution and laws of the United States. Indicate below the federal basis for your claims.

| 742 U.S.C. § 1983 (state, county, or municipal defendants)          |
|---|
| Bivens v. Six Unknown Federal Narcotics Agents, 403 U.S. 388 (1971) |
| (federal defendants)  |
| Other (please specify)  |
|   |

| II.      | PLAINTIFF(S) INF  | ORMATION  |
|----------|---|---|
|          | Name:   | MIGUEL DIAZ   |
|          | Prisoner ID #:  | 18A2702   |
|          | Place of detention:   | ATTICA CORRECTIONAL FACILTY   |
|          | Address:  | BOX 149 ATTICA NOY 14011  |
| CTANALI. | ☐ Pretrial de ☐ Civilly con ☐ Convicted ☐ Convicted ☐ Immigrati | mmitted detainee<br>d and sentenced state prisoner<br>d and sentenced federal prisoner  |
| ııı.     | requested in this se<br>may be used and a                       | nal plaintiffs, each person must provide all of the information ection and must sign the complaint; additional sheets of paperattached to this complaint. |
| 111.     | DEFENDANT(S) II   |   |
|          | Defendant No. 1:  | SHITH ERIC J.  Name (Last, First)   |
|          |   | CORRECTION OFFICER FOR DOCCS  Job Title   |
|          |   | UPSTATE CORRECTIONAL FACILITY - PO BOX Work Address   |
|          |   | MALONE NY 12953   |
|          |   | City State Zip Code   |
|          | Defendant No. 2:  | DUNNING TRE VOR Name (Last, First)  |
|          |   | SARGUANT FOR DOCCS  |

### Case 9:19-cv-01438-MAD-TWD Document 1 Filed 11/20/19 Page 3 of 43

NAME OF DEFENDENT ADAM J. GALLAGHER

POSITION OF DEFENDENT C.O FOR DOCCS DEFENDANT IS SUED IN INDIVIDUAL AND/OR OFFICIAL CAPACITY ADDRESS OF DEFENDANT UPSTATE CORRECTIONAL FACILITY MALONE N.Y 12953 NAME OF DEFENDANT JOSHUA TULTP POSITION OF DEFENDANT C.O FOR DOCCS DEFENDANT IS SUED IN INDIV \_\_\_ AND/OR OFFICIAL CAPACITY \_\_\_ ADDRESS OF DEFENDANT UPSTATE CORRECTIONAL FACILITY MALONE NY 12953 NAME OF DEFENDANT ROBERT J. LAMICA II POSITION OF DEFENDANT CO FOR DOCCS DEFENDANT IS SUED IN INDIV \_\_ AND/OR OFFICIAL CAPACITY\_ ADDRESS OF DEFENDANT UPSTATE CORRECTIONAL FACILITY MALONE N.Y 12953 NAME OF DEFENDANT GERALDINE M. WILSON POSITION OF DEFENDANT NURSE FOR DOCCS DEFENDANT IS SUED IN INDIVY AND/OR OFFICIAL CAPACITY ADDRESS OF DEFENDANT UPSTATE CORRECTIONAL FACILITY MALONE NY 12953 NAME OF DEFENDANT JAHES B. TROMBLEY POSITION OF DEFENDANT C.O FOR DOCCS DEFENDANT IS SUED IN INDIV. \_\_ AND/OR OFFICIAL CAPACITY ADDRESS OF DEFENDANT UPSTATE CORRECTIONAL FACILITY MALONE N.Y 12953 NAME OF DEFENDANT BRYAN T. LECLATE POSITION OF DEFENDANT C.O FOR DOCCS DEFENDANT IS SUED IN INDIV - AND/OR OFFICIAL CAPACITY-ADDRESS OF DEFENDANT UPSTATE CORRECTIONAL FACILITY MALONE NY 12953 NAME OF DEFENDANT \_ CAPTION DOMONIC (FIRST NAME UNKNOWN) POSITION OF DEFENDANT CAPTION FOR DOCCS DEFENDANT IS SUED IN INDIV Y AND/OR OFFICIAL CAPACITY ADDRESS OF DEFENDANT UPSTATE CORRECTIONAL FACILITY MALONE N.Y 12953 NAME OF DEFENDANT DEBORAH E. MAHONEY DEFENDANT IS SUED IN INDIV AND/OR OFFICIAL CAPACITY ... POSITION OF DEFENDANT P.A FOR DOCCS ADDRESS OF DEFENDANT UPSTATE CORRECTIONAL FACILITY MALONE N.Y 12953 GABRIEL ORBEGOZO, OFFICER FOR DOCCS, UPSTATE C.F BOX 2000, MALONE N.Y 12953 MARSHALL FRICE, CORRECTION OFFICER FOR DOCCS, UPSTATE CORRECTIONAL FACILITY BOX 2000, MALONE N.Y 12953 ALL DEFENDANTS

\*14 IN TOTAL, ARE
BEING SUED INDIVIDAL ONLY.

\* AND P.O BOX 2000)

AT ADDRESS WRITEN. ALL!

| AND THE STATE OF T | UPSTATE CORRE  | ECTIONAL FAC   | ILITY-POBOX 2000  |  |  |  |
|--|--|----------------|-------------------|--|--|--|
|  | City   | N· Y<br>State  | Zip Code          |  |  |  |
| Defendant No. 3:   | Name (Last, First)                                       |                |                   |  |  |  |
|  | SUPERINTENDE<br>Job Title                                |                |                   |  |  |  |
|  | Work Address   | IONAL FACILITY | y-p.0-Box 2.000   |  |  |  |
|  | City   | State          | Zip Code          |  |  |  |
| Defendant No. 4:   | GETTMANN GARY<br>Name (Last, First)                      | <b>Y</b>       |                   |  |  |  |
|  | LUETENANT FOR Job Title                                  | Docc5          |                   |  |  |  |
|  | UDSTATE CORRECTIONAL FACILITY P 0 BOX 2 000 Work Address |                |                   |  |  |  |
|  | City   | N. Y<br>State  | 12953<br>Zip Code |  |  |  |

If there are additional defendants, the information requested in this section must be provided for each person; additional sheets of paper may be used and attached to this complaint.

#### IV. STATEMENT OF FACTS

State briefly and concisely the facts supporting your claims. Describe the events in the order they happened. Your statement of facts should include the following:

- The date(s) on which the events occurred
- Where these events took place (identify the facility and, if relevant, the specific location in the facility)

 How each defendant was involved in the conduct you are complaining about

If you were physically injured by the alleged misconduct, describe the nature of your injuries and the medical evaluation and treatment you were provided. You need not cite to case law or statutes or provide legal argument in the Statement of Facts. Use additional sheets of paper if necessary.

ON 2.22.19 I WAS PHYSTOLLY & SEXULLY ASSAULTED BY THESE OFFICERS! EFTCI SHITH

SEXULLY ASSAULTED HE BY VIOLENTLY PLILITING ON MY PENTS & SECTIM SACK BELISTING A

BECAKTING SKIN, ALL OTHERS TOOK PLACE IN TWO EXCENSIVE FORCE/ASSAULTS ON ME.

BEFAKTING HY NOSE, KNOWLTING OUT HY TOOTH, STITCHES TO MY EYE LID, STITCHS TO MY EYE

BROWE, BRUSES & LASARATIONS TO OVER \$10% OF MY FACE \$4.60% OF MY BODY! BY BEATING

ME TO A PULP TWICE WHILE CUFFED FOR NO BEASON WHILE CALLING HE A SPIL SAYING

WE HATE YOU NITGERS & SPICS) ALL INTURYS ARE BACKED BY DOCTORS DOCUMENTS FROM

ALTCE HYDE HISTITAL & PHOTOS! SOT DUNNIANG, CAP. DOMONIC, LT. GETTMANN ALL WATCHED

WHILE SUPT DONALD G. WHILE GAVE ORDERS! NOTE) AFTER THE FIRST ASSAULT, BEGITSTERD

NURSE GERALDINE M WILSON DISPITE THERE BEING A HOLE IN MY EYE LIDTHE

\$126 OF A NICKLE, AND MANY MORE MAJOR INTURYS SENT ME BACK TO MY CELL AND

SHOULD HAVE SENT ME TO THE HOSPITAL! SETTING THE STAGE FOR THE SECOND ASSAULT

IN WHICH I WAS SEXULLY ASSAULTD A BELATIVED MORE MAJOR INJURYS! ALL "I"!

DEFENDANTS WERE INVOLVED IN THESE VEOLATIONS OF ME! AND I HAVE THE

\*\*

PHOTO'S AND DOCTORS DOCUMENTS (EVIDENCE) TO PROVETHES! ALL IS ATTACHED!

### V. STATEMENT OF CLAIM(S)

State briefly and concisely the constitutional and/or statutory basis for each claim you seek to assert and identify the defendant(s) against whom each claim is

asserted. Commonly asserted claims include: excessive force; failure to protect; deliberate indifference to medical needs; unconstitutional conditions of confinement; denial of due process in a disciplinary or other proceeding; denial of equal protection; retaliation for the exercise of a First Amendment right; and interference with free exercise of religion. Legal argument and case citations are not required. Use additional sheets of paper if necessary.

#### FIRST CLAIM

| -                                       | EIGHTH AMENDMENT VIOLATIONS-SEXULE ASSAULT, EXCESSIVE FORCE,             |
|---|--|
| 2 4                                     | PAIN AND SUFFING, HENTAL ANGUISH, SCARD FOR LIFE, RACIST HATETRET        |
| · • • • • • • • • • • • • • • • • • • • | ATTEMTED MURDER, CARE, CUSTUDY AND CONTROLE! FAILURE TO PROTECT!         |
|   | SECOND CLAIM   |
| _                                       | DELIBERATE INDIFFERENCE TO MEDICAL NEEDS!                                |
| _                                       |  |
| _                                       |  |
|   | THIRD CLAIM  |
| _                                       |  |
| · -                                     |  |
| _                                       |  |
| ′I. F                                   | RELIEF REQUESTED   |
| ,                                       | State briefly what relief you are seeking in this case.                  |
| _                                       | THREE HUNDRED MILLION DOLLERS.   |
| 27 <del>-</del>                         |  |
| 1                                       | declare under penalty of perjury that the foregoing is true and correct. |
|   |  |
| 1                                       | Plaintiff's signature  |
|   | (All plaintiffs must sign the complaint)                                 |

(revised 10/2/16)

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|---|
| TOTAR - CARTONIA - PROJULIANO 2 8000                              |
| DEAR-GREIVANCE (Poctivioshus) 2-8-19 UST-64656-19                 |
| 2-11-19   |
| FROM: MIGUEL DIAZ-18A2702-10B-B1-B3                               |
| LOM. LITEGEL DIAZ-10AZ-10B DI-DS                                  |
|   |
| I FILED A PREA COMPLAINT AGINST C.O E                             |
| SMITH FOR "SEXUALE HERASSMENT" COM NO : 009-2                     |
| AND AGKED FOR A SEPERATION ORDER TO STOP THE                      |
| HERASSMENT & RETAILEATION, BUT THEY HAVE YET TO                   |
| HONER THE FEDIRAL LAWS OF SEPERATION. THE                         |
| LETTER I WROTE BEHIND THIS IS THE ONE                             |
| I WROTE TO THE GALLERY SARGENT, ASKING FO                         |
| HELP WITH THIS CONTINUED HERASOMENT &                             |
| RETAILEATION BY C.O SMITH AND IT HAS YET TO                       |
| STOP. THIS IS MY LAST DESORT AT A SEPERATION                      |
| BEFOR I HAVE TO FILE GUIT, FOR VIOLATION OF                       |
| DREA SEPERATION FEDERAL LAWS PLEASE HELT                          |
|   |
|   |
|   |
|   |
|   |
|   |

TO: 5GT/PREA

2-8-19

FROM: MIGUEL DIAZ-18A2702-10BB1B3

I HAVE A PREA COMPLAINT AGIINST C.O E 5MITH. THIS MODNING HE WALKED THE B GALLERY AND AS I ASK FOR A ADVANCE REQUE FORM AND WRITEING PAPER, HE DENIED HE, AN PAUSED, AT MY CELL DOOR, WINKED AND BLEW A KISS AT ME! PLEASE GET ME MY SUPPLY AND PLEASE UNDERSTAND THAT IT IS AGINST FEDERAL PREA LANG TO HAVE HIM ON THE SAME GALLERY A5 ME. CALL THE PREA OFFICE AND A5K... My PREA COMPLAINT # I5 (009-2019.) 5GT K MANNING TOOK THE FULL REPORT. YOU CAN NOT ALLOW THIS SEXAULE HERASSMENT & RETAILIATION TO CONTINUE, AND HAVE TO FOLLOW THE PREA FEDERAL 5GT. IF VIOLATED AGAIN I WILL FILE SUIT. PLEASE HELP STOP THIS! RESPECT FULLY!

ALL IS ON CAMRA" HE CAN NOT BE ON THE SAME GALLERY AS ME. DLEASE STOP THIS!

DEAD GREIVANCE 2-8-19 FROM: MIGUEL DIAZ-18A2702-10B-BI-B3 IM WRITEING TO ASK FOR YOUR HELP ... I DON'T KNOW IF DEP SANDRAH I THENK HER NAME IS. "THE PREA DEP" UNDERSTANDS THE PREA LAWS OR SHE JUST MISTEAKN ABOUT THE FEDERAL PREA LAW THAT SAY UPON A COMPLAINT FOR SEXUALE HERASSHENT OR ARUSE THAT A SEPERATION ORDER MUST BE PUT INTO PLACE IN ORDER TO PREVENT DETAILEATION. SHE TOLD THE SGT THAT THE CASE HAS TO BE COMPLETED BEFOR A SEPERATION ORDER IS PLACED IN, WHICH IS UNTRUE. IF IT WASTRUE THAT WILL LEAVE THE VICTEM OPEN TO TONG OF BETAILEATION PLEASE CHECK INTO THIS DEEPLY ... SHE IS SO WRONG & MAY OR MAY NOT KNOW IT. PLEASE DO YOUR DEEP RESERCH AND INFORM HER OF THE FACTS. C.D E. SMITH OF 10B: IS ALREADY TRYING TO RETAILEATE, HE TOLD THE SGT THAT I ATTEMPED TO SPLASH HIM, THEN SAID I DID SPLASH HIM BUT THE SGT COUGHT WHAT HE FIRST SAID, HE TRYED TO GET NEW CHARGES ON ME TODAY ... UPON FINDING OUTABOUT THE PREA COMPLAINT, SO HOPE IS TO COME ... PLEASE HELP! TO GREIVANCE AT UPSTATE C.F

(3.9.19)

ON (2.22.19) AT AROUND 920 AM AFTER A CELL (10B.BI-03B) EXSTRACTION, VIDEO WILL SHOW THAT (R.N WILSON) STANDS AT A 5 FOOT DISTANCE & DOES NOT DO A PROPER PHYSICAL EXZAMINATION OF HE. ONLY GETTING CLOSE TO DO THE FINGURE TEMP THING ON MY FINGURE. I WAS PUT BACK IN MY CELL AND DISCOVERD I HAD A NICKLE SIZE HOLE ON MY EYE LID AMONGSTED COUNTLESS OTHER INJURYS. UPON HE TELLING & SHOWING DN WILSON) SHE STATES WHERE DID THAT COME FROM, I TELL HER HAD SHE DONE A PROPER EXZAMINATION SHE WOULD HAVE FOUND IT, A 2ND EXSTRCTION TAKES PLACE A FEW HOURS AFTER THAT, THAT PHILES ON MORE INTURYS TO ME, WHICH SHOULD NOT AND WOULD NOT, HAVE HAPPEND IF (RN WILSON) WOULD HAVE DONE HER TOB, I NOULD HAVE BEEN AT ALICE HYDE HEDICAL CENTER SOONER, WHERE DOCTORS DUT'S STICHES IN THAT HOLE O CLOSE, 2 ON MY EYEBROWE, DISCOVED I HAD A BROKEN NOSE + COUNTLESS OTHER INTURYS. (NOTE) SHE IS ALSO ON CAHRASAYING DON'T WORRY THAT WILL HEAL IN DO TIME, THEN WALKS AWAY. THE 2ND EXTRACTION WHICH LED TO THE SEXUALE ASSAULT ON HE + OTHER INJURYS COULD HAVE BEEN PREVENTED HAD (RN WILSON) DONE HER TOB. FROM

> HIGUEL DIAZ #18A2702

DEAR GREIVANCE AT UPSTATE.

(3:10:19)

ON (2.22.19) SGT T. DUNNING, CAPTION DOMINIC

SAT + WATCHED AS I WAS HAYNESLY ASSAULTED +

ALMOST MURDERD TWICE, BY C. D'S AT UPSTATE, CF

ALICE HYDE MEDICAL CENTER DOCTORS, CONFIRM, I HAD

A BROKEN NOSE, NEEDED 3 STICHS ON MY EYE LID, 2 ON MY

EYE BROWE, BRUSES TO OVER 60% OF MY BODY 4 70% OF MY

FACE AND NAS SEXUALLY ASSAULTED BY CO E SMITH, ALONG

WITH COUNTLESS OTHER INTURYS" ALL DOCUMENTED BY DOCTORS

DOCUMENTS (CHECK MY MEDICAL FILE FOR PROFF) PLEASE DEAL

WITH ALL THOSE INVOLVED ACCORDING THIS COULD HAVE BEEN

PREVENTED RESPECTFULLY FROM MIGUEL DIAZ#18A2702

THANK YOU.

# DEAR DR MORLEY CHIEF MEDICAL OFFICER (4 1.19)

I TUST GOT YOUR NAME & INFO AND WOULD LIKE TO BRING SOHETHING TO YOUR ATTENTION. ON 2.22.19 AFTER A USE OF FORCE IN UPSTATE CORRECTIONAL FACILITY, TO BUILDING 5HU, I WAS PUT INTO THE HOLDING PINTO BE CHECKED BY 2N WILSON) RN WILSON STOOD AT A 5 FOOT DISTANCE, AND ) ID NOT PHYSICLLY CHECK ME, ONLY GOT CLOSE TO PUT THE FINGURE TEMP THING ON MY FINGURE, AFTERWARDS I WAS PUT BACK IN MY CELL WHERE I NOTICED A NICKLE SIZE HOLE IN MY EYE LID, I SHOWED (RN WILSON) THE HOLE AND (RN WILSON) SAYS WHERE DID THAT COME FROM, I EXSPLAINED THAT HAD I BEEN HECKED PROPERLY IT WOULD HAVE BEEN SEEN) RN WISON THEN WALKS IWAY & SAYS THAT WILL HEAL IN DO TIME. I LATER WENT TO ALICE HYDE HEDICAL CENTERS (EMERGANCY ROOM) WHERE DOCTORS DETERHIND I NEED STICHES IN THAT EYE HOLE, ALONG WITH OTHER COUNTLESS INTURYS, THERE IS CLEAR VIDEO OF THIS IF YOU REQUEST IT, AT 1PSTATE (2.22.19) BTW 9°20 +9°45 AM. (PROFF) ON CAMPA YOU VILL SEE PN WILSON) NOT CHECK ME, AND THERE'S NO REPORT OF ANY O SAYING I DID IT TO MYSELF, WHICH MEANS SHE FAILED HER OB, DUTIES. PLEASE DEAL WITH THIS. HAD (EN. WILSON) )ID A PROPER CHECK. A 2ND EXSTRACTION WOULDN'T HAVE DECLIRED BECAUSE I WOULD HAVE BEEN AT ALICE HYDE GETTING MY YE STICHED & MY OTHER INTURYS TAKEN CARE OF. (THANK YOU) MIGUEL DIAZ# 18A2702

| DEAR ANTONEY J. ANNUCCI (DOCCS COMMISSIONER) (3:22:19) |
|--|
| PLEASE FIND THAT I HAVE INCLOSED COPIES OF THE TWO     |
| ATTEMPTED MURDERS, AND ONE SEXUALE ASSAULT DONE TO     |
| ME BY COESMITH, SGT T. DUNNING AND OTHERS AT           |
| UPSTATE CORRECTIONAL FACILITY ALL IS BACKED \$100      |
| BY DOCTORS AT ALTCE HYDE MEDICAL CENTER AND THE        |
| DOCTORS AT DOCCS. I ASK THATYOU DEAL WITH ALL          |
| THOSE INVOLVED ACCORDINGLY & SNIFTLY. NO ONE IS ABOVE  |
| THE LAW & SHOULD GET AWAY WITH CRIMES SUCH AS THESE.   |
| PESPECT FULLY  |
| THANK YOU  |
| MIGUELDIAZ   |

| DEAR DOCCS SPECIAL INVESTIGATIONS              | 3.11.18                  |
|--|--------------------------|
| PLEASE FIND A CLEARER COPY OF THE EVENT TH     | AT TOOK PLACE            |
| ALONG WITH THE UPDATES ON THE ALL IVE SUFFER   |                          |
| AT THE PREA SYSTEM AT UPSTATE CF, YOU WILL FIN | D COUNTLESS COUNTS       |
| OF SEXUALE HERASSHENT REPORTS ALONG WITH RETA  | ILEATION REPORTS,        |
| THAT IF RESPECTED COULD HAVE PREVENTED THIS    | SEXUALE ASSAULT          |
| AND ATTEMPTED MURDERS ON HE. BY C.O E. SHI     | TH, SGT T. DUNNING       |
| AND OTHERS AT UPSTATE C.F. YA'LL DIDN'T PROT   | ECT HE LIKE YOU PROMISED |
| THE DOCTORS DOCUMENTS BACK MY CLAIMS %100      | , AND I WOULD \$100      |
| LIVE TO PRESS CHARGES ON C.O E. SHITH FOR THE  | SEXUALE ASSAULT,         |
| ALONG WITH THE ATTEMPTED MURDERS OF ME, BY C   | OE SHITH, SGT DUNNING    |
| AND ALL OTHERS WHO WHERE INVOLVED, WIT         | HTHIS HAYNESS CRIHE      |
| BACKOBY MY INJURYS DOCUMENTED BY DOCTORS AT AL | ICE HYDE HEDICAL         |
| CENTER AND DOCTORS AT DOCCS.                   | THANK YOU                |
|  | RESPECT FULLY            |
|  | MIGUEL DIAZ              |
|  | 1842702                  |
|  |                          |
| (NOTE) THE FRANKLYN COUNTY D.A OFFICE H.       | as been sent the         |
| FACTS ALSO. I RESPECT FULLY ASK THAT YO        | OU HELP THE D.A          |
| PROSTCUTE ALLTHOSE INVOLVED AND BR             |                          |
| BECAUSE NO ONE IS ABOVE THE LAW (              | LOBODY) PIGHT OF WRONG?  |
|  |                          |



# Corrections and Community Supervision

ANDREW M. CUOMO Governor

ANTHONY J. ANNUCCI Acting Commissioner

# Notification to Complainant of Closure of Investigation

To:

Diaz, Miguel 18A2702

Facility: Upstate C.F.

From:

P. Woodruff, DSS

**Upstate Correctional Facility** 

Subject:

**Facility Investigation** 

Date:

February 25, 2019 (Date Corrected)

Based upon your complaint dated on or about 2/2/19, the facility conducted an investigation into your allegation which was reviewed by the Office of Special Investigation. facility conducted an investigation into your allegation which was reviewed by the Office of Special Investigation.

Please be advised that as a result of the investigation, the facility and OSI SCD facility and OSI SCD made the following finding: The allegation was deemed to be UNFOUNDED and has been closed. Unfounded means an allegation was investigated and determined not to have occurred. The allegation was deemed to be UNFOUNDED and has been closed. Unfounded means an allegation was investigated and determined not to have occurred.

This finding is based upon the evidence of the case.

(NOTE) SHOWS THIS LETTER IS ATTY PO (READ IT) SHOWS I REPORTED THE SEXUALE ABUSE WHEN IT FIRST STATED HAPPEND! SHOWS COVER UP! MY COMPLAITS DENIED DISPITE THE

(FACTS SHOWING PROFF)

(B) THIS COULD HAVE ALL BEEN PREVENTED! AS YOU CAN SEE I TRYED TO

GET HELP!

Ref: Upstate C.F. PREA Log # 2019-009-UST



ALLEN RILEY Chairman THOMAS J. LOUGHREN Commissioner

March 15, 2019

Mr. Miguel Diaz DIN # 18A2702 Downstate Correctional Facility P.O. Box 445 Fishkill, NY 12524

Dear Mr. Diaz:

This is in response to your letter received on March 15, 2019.

Please be advised that the Commission of Correction has forwarded your complaint letter to the Office of Special Investigations for review and handling.

Please be further advised any future correspondence regarding this matter should be addressed directly to the Office of Special Investigations. You may write to them at the following address:

Chief of Investigations / Office of Special Investigations NYS Department of Corrections and Community Supervision State Campus, Building 9 Albany, New York 12226

Sincerely,

Bureau of Field Operations



#### SICK CALL SIGN UP

7:00 AM - 8:00 AM - sick call slips placed on bars daily for nurse to pick up

#### SUPPLY ROUNDS

Daily - Ten (10) sheets paper, grievance forms, request slips, medical slips, disbursement forms and pens.

Tuesdays - toothbrushes, toothpaste, comb, soap, toilet paper, brown bag as needed

#### LIBRARY CART (2 books may be borrowed at a time)

Library request slips picked up Saturday, 3:00 PM - 11:00 PM shift for delivery on Sunday

#### **CELL CLEANUPS**

3:00 PM - 11:00 PM Tuesdays, Thursdays and Saturdays

#### COMMISSARY

Once every 14 days per PIMS level on Mondays as determined by the last Commissary Buy for the Unit.

#### INMATE MAIL

Outgoing: Pickup 7:00 AM – 8:00 AM (Monday through Friday) Incoming: Distribution – Afternoon Shift (3:00 PM – 11:00 PM)

#### **CELL STUDY**

Once per week

#### WEIGHING OF INMATES

First Sunday of the Month

#### 11. PREA

#### Policy:

Sexual abuse is unwanted sexual contact with another inmate or any sexual contact with a staff member. Sexual harassment includes repeated sexual comments or gestures. The Department of Corrections and Community Supervision has **Zero Tolerance**for Sexual Abuse and Sexual Harassment. The Department does not tolerate sexual abuse or sexual harassment. All reports of sexual abuse, sexual harassment or retaliation because of such a report will be investigated. Anyone who sexually abuses or harasses someone will be disciplined and/or prosecuted.

#### You have the right to be free from sexual abuse and sexual harassment.

**About Your Safety:** No one has the right to make you do a sexual act. You do not have to put up with sexual harassment, sexual abuse or being forced to have unwanted sexual contact with anyone. If you are being pushed, threatened or blackmailed into a sex act by another inmate or by staff, you should report it. You should also report if anyone tries to get back at you because you reported such an incident or spoke to an investigator about sexual abuse.

#### **Definitions**

Inmate-on-Inmate Sexual Abuse is when one or more inmates have sexual contact with another inmate when he or she doesn't want it, or by using coercion, threats or force.

**Staff-on-Inmate Sexual Abuse** is when an employee, volunteer, intern or outside contractor has any type of sexual contact with an inmate. Staff asking for sex or making sexual threats are also types of sexual abuse.

#### Sexual Harassment includes:

(1) Repeated and unwelcome sexual advances, requests for sexual favors, or verbal comments, gestures, or actions of a derogatory or offensive sexual nature by one inmate directed toward another; and



#### 10. DAILY SCHEDULE

#### **COUNTS**

MIDNIGHT 2:00 AM 4:00 AM 6:00 AM 5:00 PM 9:00 PM

#### MEAL SCHEDULE

7:15 AM – 8:00 AM – Breakfast feed-up and cleanup 11:30 AM – 12:30 PM – Noon Meal and cleanup 4:00 PM – 5:00 PM – Supper meal and cleanup

#### MEDICAL SERVICES (ON UNIT)

7:00 AM – 8:00 AM – Medications, insulin and nurses sick call rounds 11:00 AM – Noon – Medication Between 6:00 – 10:00 PM – Medication

#### DAILY OUTSIDE EXERCISE

Will be completed on the 7:00 AM - 3:00 PM tour

#### **SHOWERS**

1 and 2 Company – Monday, Wednesday and Friday 3 and 4 Company – Tuesday, Thursday and Saturday PIMS Level III get an additional shower on Sundays

#### **ORC ROUNDS**

Daily - Monday through Friday (excluding Holidays)

#### **CHAPLAINS ROUNDS**

Once per week

#### **BARBERING HAIRCUTS**

Afternoon Shift - 4th Saturday of each month

#### **VISITS**

9:00 AM - 2:30 PM Daily

#### LAW LIBRARY

Law Library Officer makes daily rounds Legal cart done daily

#### **NOTARY**

Tuesday and Thursday (excluding Holidays)

#### LAUNDRY SCHEDULE

Monday – 1 and 2 Company whites Tuesday – 3 and 4 Company whites Wednesday – 1 and 2 Company greens Thursday – 3 and 4 Company greens As a victim of sexual abuse in detention, you have the right:

- · to decide who to tell;
- to have any fears of retaliation taken seriously;
- to request a housing or cell change for your safety;
- to request to speak with mental health staff:
- to contact a support agency such as Just Detention International or a rape crisis program;
- · to seek advice from a lawyer.

As a victim of sexual abuse in detention, you can expect:

- staff you report the abuse to will treat you with respect;
- to be given information about how best to take care of yourself;
- that your questions about what will happen if you report and how to get medical care will be answered;
- it will take time to heal and you will have a wide range of feelings that will change as you work to heal;
- if you choose to utilize outside support services to help with healing, those services will be available to you.

# **Report Sexual Abuse**

To report an incident of sexual abuse, notify facility staff or contact DOCCS Office of the Inspector General:

Office of the Inspector General
Department of Corrections and
Community Supervision
The Harriman State Campus, Building 2
1220 Washington Avenue
Albany, New York 12226-2050

Additional Rape Crisis Program contact information is available from:

NYSCASA

New York State Coalition Against Sexual Assault 28 Essex Street Albany, NY 12206



Sexual Abuse Prevention & Education Office Department of Corrections and Community Supervision The Harriman State Campus, Building 2 1220 Washington Avenue Albany, New York 12226-2050

Andrew M. Cuomo Governor Anthony J. Annucci Acting Commissioner

March 2014

DC132C (3/14)

# Help for Victims of Sexual Abuse in Prison

What you need to Know About the DOCCS Enhanced Victim Services and Rape Crisis Hotline Pilot Project



THE NEW YORK STATE

DEPARTMENT OF CORRECTIONS

AND COMMUNITY SUPERVISION HAS

**ZERO TOLERANCE** 

FOR SEXUAL ABUSE
AND SEXUAL HARASSMENT

**Victim Support** 

## The University of Vermont Health Network-Alice Hyde Medical Center

133 Park St. Malone, NY 12953 518-483-3000

Discharge Instructions for:

Diaz, Miguel

Arrival Date:

Friday, February 22, 2019

Thank you for choosing The University of Vermont Health Network-Alice Hyde Medical Center for your care today. Your primary care provider will receive the final results of all your tests done today. It is important that you follow up with your provider about these results in case there is more information you need to know.

Care provided by: Hill, Adam, MD

Diagnosis:

Laceration without foreign body of right eyelid and periocular area; Fracture of nasal

bones; Contusion; Dislocation of tooth

| DISCHARGE INSTRUCTIONS  | FORMS                     |
|---|---------------------------|
| Bruised Ribs<br>Contusions<br>Absorbable Suture Repair-Brief                          | Medication Reconciliation |
| FOLLOW UP INSTRUCTIONS  | PRESCRIPTIONS             |
| Correctional Facility MD, Upstate When: Next week; Reason: Recheck today's complaints | None                      |

#### SPECIAL NOTES

You should be evaluated by a dentist as soon as possible to determine if your teeth need any bracing or surgery. Most likely they will heal on their own. You have a broken nose that will heal and is not significantly displaced. The sutures in your eyelid and eyebrow will fall out on their own in 5-7 days. Wash the area twice daily with soap and water.

hereby acknowledge that I have received and understand the above instructions and prescriptions (if any).

Miguel Diaz

MRN # M151582

#### TEDICATIONS:

You have received a medication today that may make you tired, dizzy, or impair your judgment. Do not drive, or do any activity that might cause injury.

Sternum

Cartilage

# **Bruised Ribs**

Your caregiver has diagnosed you as having bruised ribs. This can occur by a blow to the chest or by a fall against a hard object. Usually these will be much better in a couple weeks. If x-rays were taken today and no fractures (break in bone) were found, the diagnosis (learning what is wrong) of bruising is made. However, broken ribs may not show up for several days, or may be discovered at a much later date on a routine x-ray when signs of healing show up. If this happens to you, it doesn't mean that something was missed on the x-ray, but simply that it did not show up on the first x-rays. Earlier diagnosis will not usually change the treatment.

### HOME CARE INSTRUCTIONS

Avoid strenuous activity. Be careful during activities and avoid bumping the injured ribs. Activities that pull on the injured ribs and cause pain are best avoided if possible.

For the first day or two, an ice pack used every twenty minutes while awake may be helpful. Put ice in a plastic bag and put a towel between the bag and the skin.

After the first day or two, heat applied for twenty minutes, four times per day, may be helpful. Do not sleep with a heating pad. This could cause burns.

Eat a normal, well-balanced diet. Drink plenty of fluids to avoid constipation.

Take deep breaths several times a day to keep lungs free of infection. Try to cough several times a day. Splint the injured area with a pillow while coughing to ease pain. Coughing can help prevent pneumonia.

Do not wear a rib belt or binder. These restrict breathing which can lead to pneumonia. Take medications as directed by your caregiver. For relief from pain or fever, use acetaminophen

(Tylenol®) or ibuprofen (Advil® or Motrin®) as directed.

#### SEEK MEDICAL ATTENTION IF:

> An oral temperature above 102° F (38.9° C) develops, or as your caregiver suggests, which is not controlled by medication.

You develop a continual cough, associated with thick or bloody sputum.

#### SEEK IMMEDIATE MEDICAL ATTENTION IF:

You have difficulty breathing.

You have nausea (feeling sick to your stomach), vomiting, or abdominal (belly) pain.

You have worsening pain, not controlled with medications, or there is a change in the location of the pain.

> You develop sweating or radiation of the pain into the arms, jaw or shoulders, or become light headed or faint.

Document Released: 12/18/2006 Document Re-Released: 06/11/2007 ExitCare® Patient Information ©2008 ExitCare, LLC.

# Contusion

A contusion is a deep bruise. Contusions are the result of an injury that caused



DEAR FRANKLYN COUNTY D.A OFFICE.

(3.11.19)

PLEASE FIND A CLEAR ACCOUNT, BACKED BY CERTIFIED DOCTORS
DOCUMENTS, INCLOSED OF THE SEXUALE ASSAULT AND TWO ATTEMPTO
MURDERS ON ME BY CO & SMITH, SQT DUNNTING AND OTHER
CORRECTION OFFICERS AT UPSTATE CORRECTIONAL FACILITY. IVE
ALSO INCLUEDED A "ALL SUFFERED BY ME LIST", DO TO THERE
ACTIONS. ALL MY CLAIMS ARE %100 BACKED BY ALICE HYDE DOCTORS,
DOCCS DOCTORS, AND MUCH MORE DOCUMENTS. I WOULD %100 LIVE
TOO PRESS CHARGES ON CO SMITH, SQT DUNNTING AND ALL THOSE
INVOLVED IN THIS HAYNESS & BRUTAL SEXUALE, AND PHYSICAL
ASSAULTS ON ME. PLEASE DO A PROPER INVESTIGATION AND ALLOW
ME TO. I WILL %100 TESTIFIE INFRONT OF THE GRAND JURY, AND
DO WHATS EVERS NEEDED TO HELP BRING THOSE INVOLVED TO JUSTICE.
THANKS FOR YOUR TIME AND I LOOK FORWARD TO WORKING WITH YOU

RESPECTFULLY)

\* MIGUEL DIAZ #

18A2702, IMIN CLINTON C.F. NOW

NOTE PLEASE TAKE YOUR TIME AND READ ALL THE FACTS."

THEN HAVE ALICE HYDE MEDICAL CENTER SEND YOU ALL

MEDICAL DOCUMENTS FROM (2:22:19) AND DOCCS, FORWARD

YOU ALL THE DOCUMENTS FROM (2:22:19 TO TODAYS DATE. MY

CLAIMS ARE %100 TRUTH, AND BACKED BY DOCTORS

DOCUMENTS OF MY INJURYS. I WANT TO PRESS CHARGES.)

BECAUSE NO ONE IS ABOVE THE LAW. (NOBODY). RIGHT OR WRONG?

day of Malch 20 9



#### Case 9:19-cv-01438-MAD-TWD Document 1 Filed 11/20/19 Page 24 of 43



### OFFICE OF FRANKLIN COUNTY DISTRICT ATTORNEY

NORTHERN OFFICE 355 WEST MAIN STREET SUITE 466 MALONE, NY 12953

Phone (518) 481-1544 Fax (518) 481-1545 Email – da@franklincony.org SOUTHERN OFFICE 56 LAKE STREET TUPPER LAKE, NY 12986

Phone (518) 359-9191 Fax (518) 359-7311 DAVID J. HAYES Chief Assistant District Attorney

JENNIFER M. HOLLIS Assistant District Attorney

ANSON E. RHODES Assistant District Attorney

MEREDITH LARSEN Assistant District Attorney

KELLY G. POUPORE
Assistant District Attorney

March 26, 2019

Miguel Diaz DIN# 18A2702 Downstate Correctional Facility Box F Red Schoolhouse Road Fishkill, NY 12524

RE: Your complaint dated March 11, 2019

Dear Mr. Diaz:

This will confirm receipt of your paperwork received on March 11, 2019.

Please be advised that this office handles prosecution of cases after an investigation by the appropriate law enforcement agency.

Please forward any future inquires or complaints to the New York State Police BCI Unit, 3327 State Route 11, Malone, New York 12953 or the New York State Department of Corrections Inspector General's Office.

Thank you.

Very truly yours,

Craig F. Carriero

Craig P. Carriero District Attorney

CPC/dm

DEAR NEW YORK STATE POLICE BCI UNIT.

(4.4.19)

ON. (2.22.19) WHILE IN UPSTATE CORRECTIONAL FACTURY I WAS SEXUALLY ASSAULTED & ALMOST MURDERD THICE By CO'S AT UPSTATE CORRECTIONAL FATHERTY ALL MY INJURYS ARE BACKED BY (ALICE HYDE DOCTORS) AND DOCCS DOCTORS! I WROTE TO THE FRANKLIN COUNTY DISTRICT ATTORNEY WHO REPLYED BACK & TOOME TO CONTACT YALL. I %100, WOULD LIKE TO FILE A COMPLAINT & PRESS CHARGES ON ALL THOSE INVOLVED INTHIS CRINE) I'VE INCLUDED A DETAILED ACCOUNT OF WHAT TOOK PLACE, ALONG WITH A (ALL I SUFFERD LIST) ALONG WITH THE JAILS U. I REPORT WHICH STATES ALL WHO WAS INVOLVED. THE ONLY THING MISSING IS THE ACTUAL MEDICAL RECORDS WHICH IM SURE YOU CAN GET FASTER THENHE. (DOCCS) IS DRAGGING THEY FEET WITH GIVEN ME THEM BECAUSE THEY KNON THEY MESSED UP & BROKE THE LAW. DLEASE ALLOW ME TO FILE A COMPLAINT & PRESS CHAPGES ON ALL WHO TOOK PART IN THIS CRIME RESPECTABLY. I WILL GO BEFORTHE GRAND JURY & FESTIFIE TO ALL THAT TOOK PLACE %100. THANK YOU, FROM MIGUELDIAZ \*18A2702

| e e e e e e e e e e e e e e e e e e e                            |              |
|--|--------------|
| DEAR FRANKLYN COUNTY POLICE                                      | (3.23.P      |
| DEAR FRANKLYN COUNTY POLICE<br>ATTN: SHERRIFF; KEVIN MULVERVILL: | pag ag an ag |
| DLEASE FIND THAT I HAVE INCLOSED COPIED DOCL                     | HENTS.       |
| OF THE TWO ATTEMPTED MURDERS AND ONE SEXUALE A                   | SSAULT       |
| DONE TO HE BY THE CORPECTIONAL OFFICERS AT I                     | UPSTATE      |
| COPPECTIONAL FACILITY ALL IS BACKED %100, B)                     | / THE        |
| DOCTORS AT ALICE HYDE MEDICAL CENTER, AND                        | Docc5        |
| DOCTORS DOCUMENTS. I WOULD LIKE TO PRESS (                       | HARGES       |
| ON CO E SMITH, SGT DUNNING, AND ALL THOSE INVO                   | OLVED.       |
| I'VE ALSO INCLUDED AN ALL I SUFFERD LIST)                        | DNCE         |
| AGAIN BACKED BY DOCTORS DOCUMENTS. PLEASE                        | ALLOW        |
| ME TO DRESS CHARGES ON ALL INVOLVED WITH V                       | IOLATEIN     |
| THE LAW I WILL GLADLY GO TO THE GRAND JURY & D                   | D NHATS      |
| NEEDED TO GET JUSTICE IN THIS CASE. PLEASE                       | HELPHE       |
| HELP YOU ENFORCE THE LAN. NOBODY IS ABOVE I                      | HE PAN       |
| AND SHOULD GET ANAY NITH CRIMES SUCH AS THESE                    | 5. IM        |
| NOW AT CLINTON C.F. DLEASE GET IN CONTACT WIT                    |              |
| (RES)  | Deci- Fully  |
| THA  | Mr You       |
| MIG  | UEL DIAZ     |
| 18A2   | -702         |
|  |              |
|  |              |
|  |              |
|  |              |

the softenesses were a transfer of the second secon

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PAGE 3 STATE OF NEW YORK
DEPT OF CORRECTIONS AND COMMUNITY SUPERVISION
UNUSUAL INCIDENT REPORT

PRINTED AT 03/26/19 11:12 AM

NOTIFICATION (FAMILY):

NOTIFICATION (POLICE/OTHER):

DIAZ, MIGUEL

18A2702 <u>DOB</u> 07/29/1983 <u>ETHNIC</u>- HISPANIC

GEN INCIDENT - SPECIFIC INCIDENT ROLE WEAPON FORCE INJURY
DISRUP BEH - CELL EXTRACTION PERP
STF WEAPONS - CHEM AG-AEROSOL PERP
OTHER - PERP

LAMICA, ROBERT J II

CO

\*

WILSON, GERALDINE M NURSE

#### Case 9:19-cv-01438-MAD-TWD Document 1 Filed 11/20/19 Page 28 of 43

UNS571 STATE OF N. Y. - DEPARTMENT OF CORRECTIONS AND COMMUNITY SUPERVISION USE OF FORCE REPORT

03/26/19

11:13:43 UPSTATE SHU UF LOG NO. 190016.00

INCIDENT DATE 02/22/19 TIME 09:20AM

UI CCC NO. 274356

GEN LOC. 29 SHU-DISCIPLN SPEC LOC. 10-B1-03B 

CB LOG NO.

INMATE

DIN/NYSID ETHNIC ROLE

DIAZ, MIGUEL

18A2702 HSP

PERP

EXAMINERS NAME

TITLE

FXAM DATE TIME

PART B - PHYSICAL EXAMINATION/TREATMENT REPORT:

SUPERVISOR REVIEW:

WAS INCIDENT VIDEOTAPED? YES

WAS VIDEOTAPE REVIEWED?

NO DATE: / /

AUTHORIZED BY:

WERE USE OF FORCE PHOTOS TAKEN? YES

WERE USE OF FORCE PHOTOS REVIEWED? YES

WAS STAFF MEMBER INJURED? NO

WAS STAFF SEEN BY MEDICAL? YES

➤ WAS INMATE INJURED?

WAS INMATE SEEN BY MEDICAL?

WAS THE UF MEMO COMPLETED? YES

. WAS THE INMATE RETURNED TO THE CELL? YES TRANSFERED TO:

REPORTED BY: SGT REVIEWED BY: LT

T. DUNNING G. GETTMANN DATE: 02/22/19

DATE: 02/22/19

REVIEW AND EVALUATION BY SUPERINTENDENT:

1 ST ASSAULT

RN. WILSON NEVER PROPERLY MEDICLY CHECKED ME, OR I WOULD HAVE WENT STRIGHT TO ALICE HYDE MEDICAL CENTER, WHERE ITWAS DISCOVERED ALONG WITH OTHER INJURYS, THAT INEED 3 STICHS ON MY EYE LID + 2 ON MY EYE BROWE (RN WILSON DIDN'T DO THE PROPERT DUTYS PAID TO PERFORM. AND UNDER MINDED THE EXSTINT OF MY INTURYS TO AID & ABED COS ON THERE PICTURES-1,2,447 VIOLATION OF ME (ON VIDEO) (AT 9.20 AM 2.22.19) SHOWS THAT I NEED STITCHS AFTER

DATE

(VIEW THE PHOTOS)

### Case 9:19-cv-01438-MAD-TWD Document 1 Filed 11/20/19 Page 29 of 43

PAGE 4 STATE OF NEW YORK
DEPT OF CORRECTIONS AND COMMUNITY SUPERVISION
UNUSUAL INCIDENT REPORT

PRINTED AT 03/26/19 11:12 AM

|          | UPSTATE SHU  | FAC COD  | E 847             | FAC LOG         | # 190012    | CCC# 2 | 274356          |
|----------|--|--|-------------------|-----------------|-------------|--------|-----------------|
|          |  | UF LOG#  | 190016            |                 |             |        |                 |
| <b>H</b> | INCIDENT DATE 02/22/19   | TIME 09:20   | AM LOCA           | TION SH         | HU-DISCIPLN | 10 B1  | 03B             |
|          | USE OF FORCE YES   | WEAPON US  | ED NO             |                 |             | 14     |                 |
|          | ************   | EMPLOYEE I   | NFORMATIC         | N:              |             |        |                 |
|          | **************************************   | ********<br>CO   | ******            | *****           | ******      | *****  | * * * * * * * * |
|          | GEN INCIDENT - SPECIFIC<br>DISRUP BEH - CELL EXT                                 | RACTION  | FORC<br>BODY H    | OLD             | INJURY      |        | DEGREE          |
|          |  |  | *****             | ******          | *********   | *****  | ******          |
|          | GETTMANN, GARY   | LT   |                   |                 |             |        |                 |
|          | GEN INCIDENT - SPECIFIC OTHER -  | INCIDENT   | FORCE             | Ē               | INJURY      |        | DEGREE          |
|          | ************   | <b>{*********</b>  | * * * * * * * * * | <b>****</b> *** | *****       | *****  | *****           |
|          | MARSHALL, ERIC E   | CO   |                   |                 |             |        |                 |
|          | GEN INCIDENT - SPECIFIC DISRUP BEH - CELL EXTR OTHER -                           | The second secon | FORCE<br>BODY HO  |                 | INJURY      |        | DEGREE          |
|          | **********   | ********   | *****             | *****           | ******      | *****  | ******          |
|          | UHLER, DONALD G  | SUPER  |                   |                 |             |        |                 |
|          | GEN INCIDENT - SPECIFIC DISRUP BEH - CELL EXTR. STF WEAPONS - CHEM AG-A          | ACTION   | FORCE             |                 | INJURY      |        | DEGREE          |
|          | **********   |  | *****             | ******          | ********    | *****  | *****           |
|          | DUNNING, TREVOR N  | SGT  |                   |                 |             |        |                 |
|          | GEN INCIDENT - SPECIFIC I<br>DISRUP BEH - CELL EXTRA<br>STF WEAPONS - CHEM AG-AE | CTION  | FORCE<br>CHEM AGT | s               | INJURY      | D      | EGREE           |
| 1        | OTHER  | ******   | *****             | *****           | ********    | *****  | * * * * * *     |
|          | GALLAGHER, ADAM J  | co   |                   |                 |             |        |                 |
|          | GEN INCIDENT - SPECIFIC I<br>DISRUP BEH - CELL EXTRA                             |  | FORCE<br>BODY HOL | D               | INJURY      | DI     | EGREE           |
|          | V V V V V V V V V V V V V V V V V V V  |  |                   |                 |             |        |                 |

\*

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PAGE

STATE OF NEW YORK DEPT OF CORRECTIONS AND COMMUNITY SUPERVISION 03/26/19 11:16 AM UNUSUAL INCIDENT REPORT

PRINTED AT

UPSTATE SHU

FAC CODE 847 FAC LOG# 190013 CCC# 274359

UF LOG# 190017

INCIDENT DATE 02/22/19 TIME 12:45 PM LOCATION SHU-DISCIPLN 10 B1 03B

USE OF FORCE YES

WEAPON USED YES

EMPLOYEE INFORMATION:

TULIP, JOSHUA

GEN INCIDENT - SPECIFIC INCIDENT

FORCE

INJURY

DEGREE

\*\*\*<del>\*</del>

BODY HOLD

LAMICA, ROBERT J II

CO

GEN INCIDENT - SPECIFIC INCIDENT

FORCE BATON

INJURY

DEGREE

STF WEAPONS - BATON

\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*

\*

WILSON, GERALDINE M NURSE

GEN INCIDENT - SPECIFIC INCIDENT FORCE INJURY DEGREE 

TROMBLEY, JAMES B

GEN INCIDENT - SPECIFIC INCIDENT FORCE
BODY HOLD

INJURY DEGREE

DUNNING, TREVOR N

SGT

GEN INCIDENT - SPECIFIC INCIDENT FORCE INJURY DEGREE

STF WEAPONS - BATON

OTHER \*\*\*\*\*\*\*\*\*\*\*

- SIGNIF EXPOSURE

LECLAIR, BRYAN T

GEN INCIDENT - SPECIFIC INCIDENT BODY HOLD

\*\*\*\*\*\*\*\*\*\*\*

FORCE

INJURY

DEGREE

### Case 9:19-cv-01438-MAD-TWD Document 1 Filed 11/20/19 Page 31 of 43

STATE OF N. Y. - DEPARTMENT OF CORRECTIONS AND COMMUNITY SUPERVISION 03/26/19 USE OF FORCE REPORT 11:13:54 UPSTATE SHU UF LOG NO. 190017.00 INCIDENT DATE 02/22/19 TIME 12:45PM UI CCC NO. 274359 GEN LOC. 29 SHU-DISCIPLN SPEC LOC. 10-B1-03B CB LOG NO. INMATE DIN/NYSID ETHNIC ROLE DIAZ, MIGUEL 18A2702 HSP PERP STAFF INVOLVED TITLE FORCE1 FORCE2 FORCE3 DEGREE SMITH, ERIC J CO SHIELD TULIP, JOSHUA CO BODY HOLD LAMICA, ROBERT J II CO BATON 



DESCRIBE ACTUAL FORCE USED:

DESCRIBE EVENTS LEADING UP TO THE APPLICATION OF FORCE:



### Case 9:19-cv-01438-MAD-TWD Document 1 Filed 11/20/19 Page 32 of 43

PAGE 5 STATE OF NEW YORK
DEPT OF CORRECTIONS AND COMMUNITY SUPERVISION
UNUSUAL INCIDENT REPORT

SUPERINTENDENT'S SIGNATURE

PRINTED AT 03/26/19 11:16 AM

DATE

| UPSTATE SHU                               | FAC CODE 84   | 7 FAC L  | OG# 190013   | CCC# 274359 |
|---|---------------|----------|--------------|-------------|
|   | UF LOG# 190   | 017      |              |             |
| INCIDENT DATE 02/22/19                    | TIME 12:45 PM | LOCATION | SHU-DISCIPLN | 10 B1 03B   |
| USE OF FORCE YES                          | WEAPON USED   | YES      |              |             |
| ***********                               | EMPLOYEE INFO |          | **********   | ******      |
| **************************************    | PA            | *******  | *********    | ******      |
| GEN INCIDENT - SPECIFIC<br>OTHER - SIGNIF |               | FORCE    | INJURY       | DEGREE      |
| ************                              |               | ******** | ******       | ******      |
| H-  |               |          |              |             |

| PREA Screening for Reception/Classification, Transfers, SHU, Separate KL Unit or Juvenile Separation Unit Admissions 0/19 Page 35 01 43  |
|--|
| Name V: AZ DIN 187702 DOB 7/29/83 Age Facility (linter).   |
| Part A: Reception PREA Questions-Inquiry and Response from the inmate Today's date:  |
| 1. Have you ever been sexually abused or victimized?   No (go to question #2)  |
| Yes, while incarcerated  |
| Yes, in the Community AND inmate is under the age of 18  |
| ☐ Yes, in the Community AND inmate is over the age of 18 ❖ Go to PREA Consent below  |
| 2. Have you ever been forced, extorted or solicited to have sex while incarcerated? ☐ Yes ☐ No (go to next question)   |
| 3. Have you ever been approached to have sex with a staff person while incarcerated?   Yes   No  |
| ❖ PREA Consent to Report Community Abuse   |
| (for inmates over the age of 18)   |
| I, do hereby give my consent to report that I have been sexually abused or victimized  |
| (Name of Inmate) while in the community. I understand that this information will be reported to the Assistant Deputy   |
| Superintendent (ADS) PREA Compliance Manager/PREA Point Person for appropriate follow-up.  |
|  |
| Signature of Inmate DIN Date   |
| Inmate did NOT consent to report sexual abuse or victimization while in the community.   |
| Note: Informed consent is not needed for an incident that occurred in an institutional setting or if the victim is under the age of 18.  |
| Part B: Transfer PREA Questions- Inquiry and Response from the inmate  |
| (go to next question)  |
| 2. Have you been forced, extorted or solicited to have sex since your last transfer?   |
| (go to next question)  3. Have you been approached to have sex with a staff person since your last transfer? ☐ No ☐ Yes  |
| (go to Part C)   |
| Part C: For all "Yes" responses from either Part A or Part B:  |
| Report any incident of sexual abuse or victimization while incarcerated to the Watch Commander in accordance with the agency's policy and procedures on reporting sexual abuse.  |
| Devide a convert this form to the ADS PREA Compliance Manager/PREA Point Person if the inmate reports  |
| any incident of sexual abuse or victimization in the community, is under the age of 16 of 15 over the age of 16 of 16 over the age of 16 over |
| Use the yellow copy of this form to notify Mental Health in place of a Mental Health Referral Form #3150<br>(immediate or regular referral).   |
| If there is <u>imminent</u> risk for self-harm or injury to others, notify Mental Health <u>immediately</u> and consult with the Watch Commander to determine appropriate safety precautions and if an inmate requires a suicide watch.  |
| Name of Watch Commander who received report: Date: Time:   |
| comments: All PREA has been addressed at upstate and he  |
| WAS SOLD by NA and - MIHL  |
| Rubail 200 - 21/119 7AM  |
| Signature of RN Provider # Date Time   |
| Perferences: Health Services Policy 1 60 Sexual Assault/Policy, 1.12B Inmate Bloodborne Pathogens Significant Exposure   |
| Facility Coordinated Response Facility Operation Manual-for appropriate action   |

3278PREA 05/18

Original: Health Record-Mental Health Section

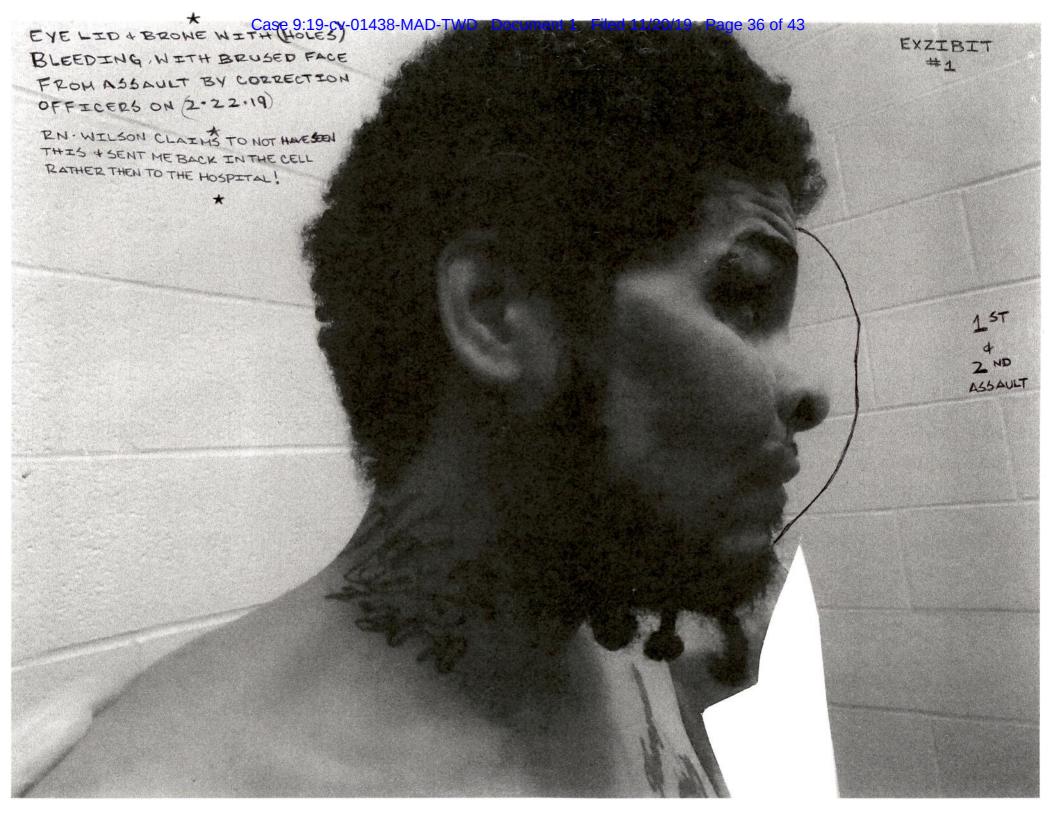
Yellow: OMH-when referral is indicated, include yellow copy of 3278MED and 3278MH

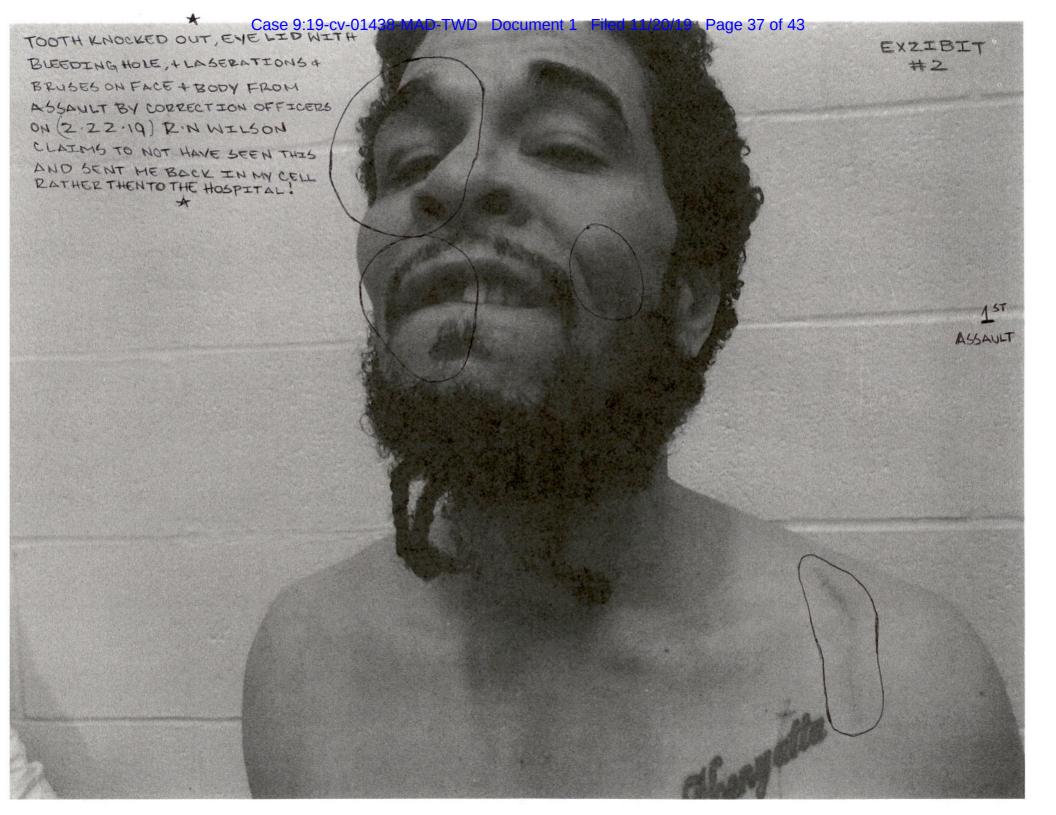
|  | DIGZ MIGUEL   | 18 A 2702                     | Date of Birth 7/29/8 3                       | Facility Name Clinton                   |
|--|---|-------------------------------|--|---|
|  | Subjective:   |                               | Last Name DIAZ,                              | m                                       |
|  |   | (#)                           | DIN# 18A2702                                 |   |
| A CONTRACTOR OF THE PERSON OF  |   |                               | Date 2/21/9                                  | Time 1207 12                            |
| Name and Personal Property lies  | Objective:  | •                             | Provider Orders:                             |   |
| STATE SPECIAL  | HIV Testing Pre/Post test counseli                    | ng given                      | Results:                                     |   |
| No. of Control of Cont |   | - "                           |  | HY DE 2/27/19 e (Negative)              |
| STATISTICAL PROPERTY.  | Assessment:   |                               | HED G  | NEGHTUE 2/22/19<br>ALIVE HYRMENIAL COR  |
|  | Ora-quick testing 2/22/16 TESTED Problem List updated | & ALICE HYDE                  | Reactive (F                                  | Positive)                               |
| 7  | Plan:   | đi<br>la                      |  |   |
| odpareneral succi  | All reactive tests are immediately refer              | red to a provider.            |  |   |
| or and the same state of the same  | Signature/Provider# RN                                | Transcribing Order/Provide    | er.#/Date/Time                               |   |
|  | Subjective: 'my penis and son<br>yanked. on alaa/     | of at postate                 | Last Name D. AZ  DIN# 18 A 276  Date 2-28-19 | Miguel Da Location ER/BHU. Time 12:15p- |
|  | Objective: Brid exam = 14.                            | mite bely chot                | le Provider Orders:                          | 2                                       |
|  | (Small per sized se<br>@ ruterion sorotu              | Ale like okin                 | lesion Moted.)                               | Lacture blieday                         |
|  | Assessment: ( ) girning reported)                     | Expa                          |  |   |
|  | Harmal healing of                                     | in No                         | 12 Juny                                      | ***                                     |
|  | Plan: Flu as needed                                   |                               |  |   |
| 34C  | Signature/Provider# All RN                            | Transcribing Ordet/Providence | ler#/Date/Finnes                             |   |

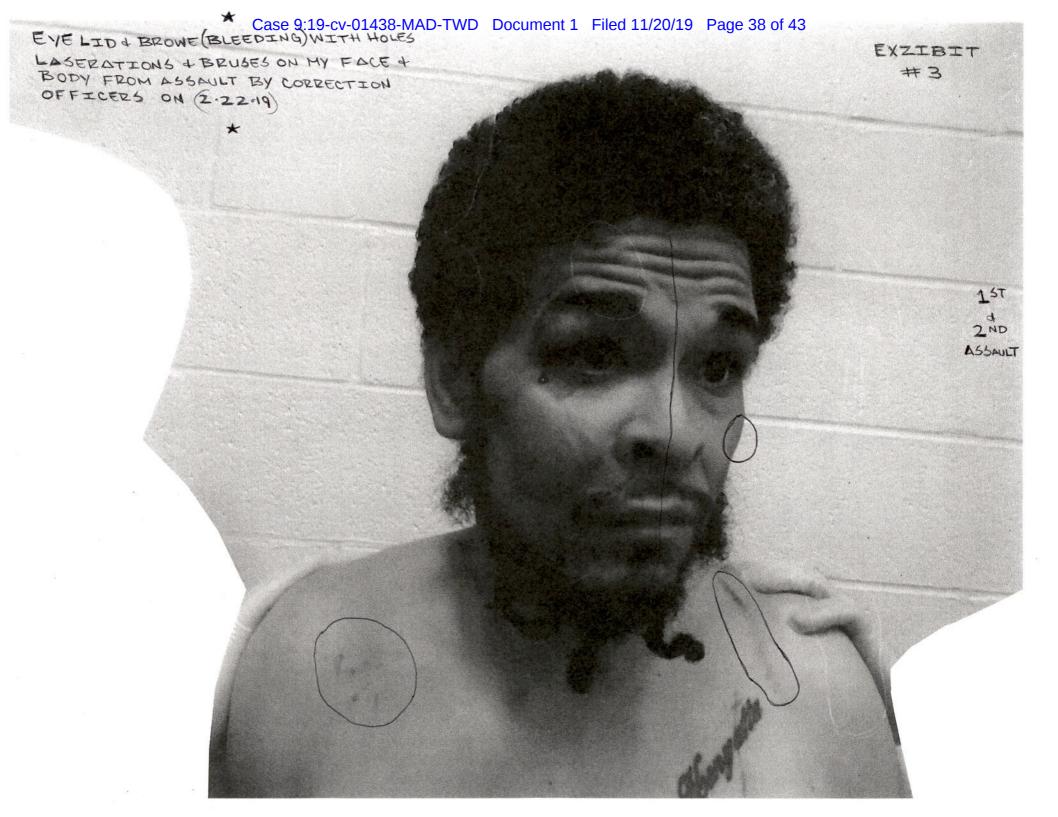
| 100      | ADDULATOR I READ IN RECORD I ROCKESS NOTE |  |  |  |
|----------|---|--|--|--|
|          | Name Dies, Miquel                         | DIN 8A2702 Date of Birth 83 Facility Name 1  |  |  |
|          | Subjective: Ouriel o                      | Hoberlatice Last Name Wias                   |  |  |
|          | in ER-OSE                                 | 1 = 99 7 12-100 DIN 18A 2702 Location BOK 10 |  |  |
|          | Objective: BP124/78 ~c                    | nother in WF Date JAM Time 1815              |  |  |
|          | Lacolation                                | autora Quegla. and a glest well not tople    |  |  |
|          | Assessment: PA Makerey                    | Report called to AHMC ER and notefield       |  |  |
|          | Plan: Ich ich lac                         | Report colled to AHMC Ex and notified        |  |  |
|          | Plan: 2 cm/acl                            | nfold Clark, Locaratin Clearse Toule         |  |  |
|          | Si  | RN Transcribing Order/Provider #/Date/Time   |  |  |
| 7        | Signature/Providet#                       |  |  |  |
|          | Subjective:                               | DIN 16A 2702 Location 10                     |  |  |
|          |   | Date 2/22/19 Time                            |  |  |
|          | Objective:                                | Provider Orders:                             |  |  |
|          | Assessment:                               |  |  |  |
| _        |   |  |  |  |
|          | Plan:                                     |  |  |  |
| <b>V</b> |   |  |  |  |
| ****     | Signature/Provider #                      | RN Transcribing Order/Provider #/Date/Time   |  |  |
|          | Subjective:                               | Last Name Dicey                              |  |  |
|          |   | DIN 1872702 Location                         |  |  |
|          | Objective:                                | Date _2/22/19 Time                           |  |  |
|          | AIP 01                                    | Provider Orders:                             |  |  |
| <b>A</b> | Assessment:                               | 10 (allytens                                 |  |  |
|          | Plan:                                     | end to ER for plastic repar                  |  |  |
| 1.       | 7   | 100 /0 01-100 1/1003/0-100                   |  |  |
| 1        | Signature/Provider#                       | RN Transcribing Order/Provider #/Date/Time   |  |  |
|          | Signature 1 to vide:                      | Continue entry into next box if necessary.   |  |  |

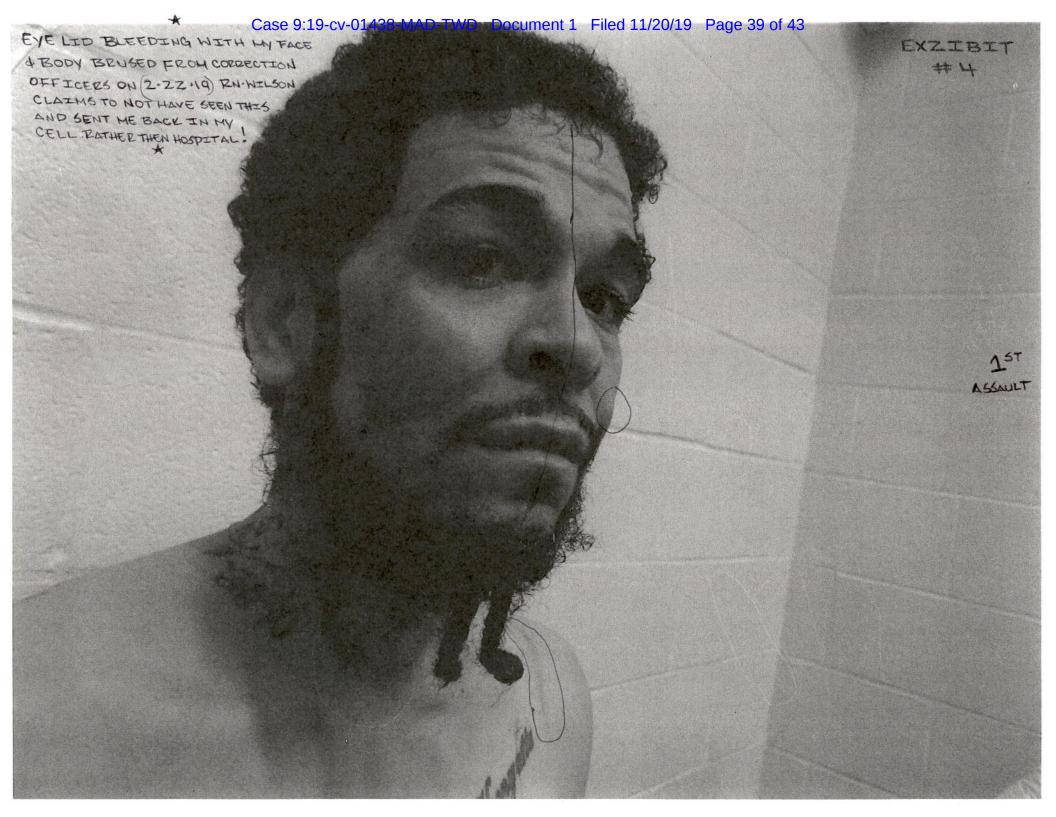
Continue entry into next box if necessary.

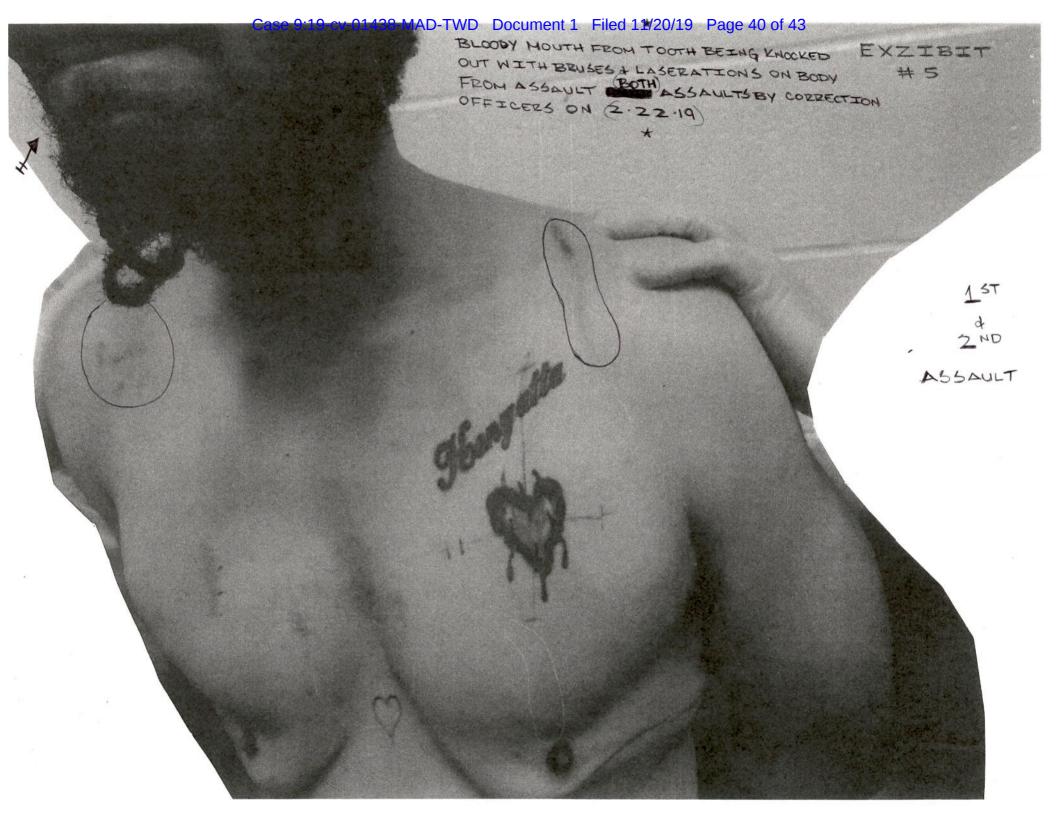
(NOTE) (IT SAYS\*2 CM LAC IN FOLD) WHICH SHOWS PROFF OF RN. WILSONS, MEDICAL MALPRATICE, BY NOT SENDING ME TO GET STITCHS AFTER THE FIRST ASSAUT SEE EXZIBIT PHOTOS#2#4 AND #7 WHICH SUPPORT THIS, 4 EXZIBIT #1!

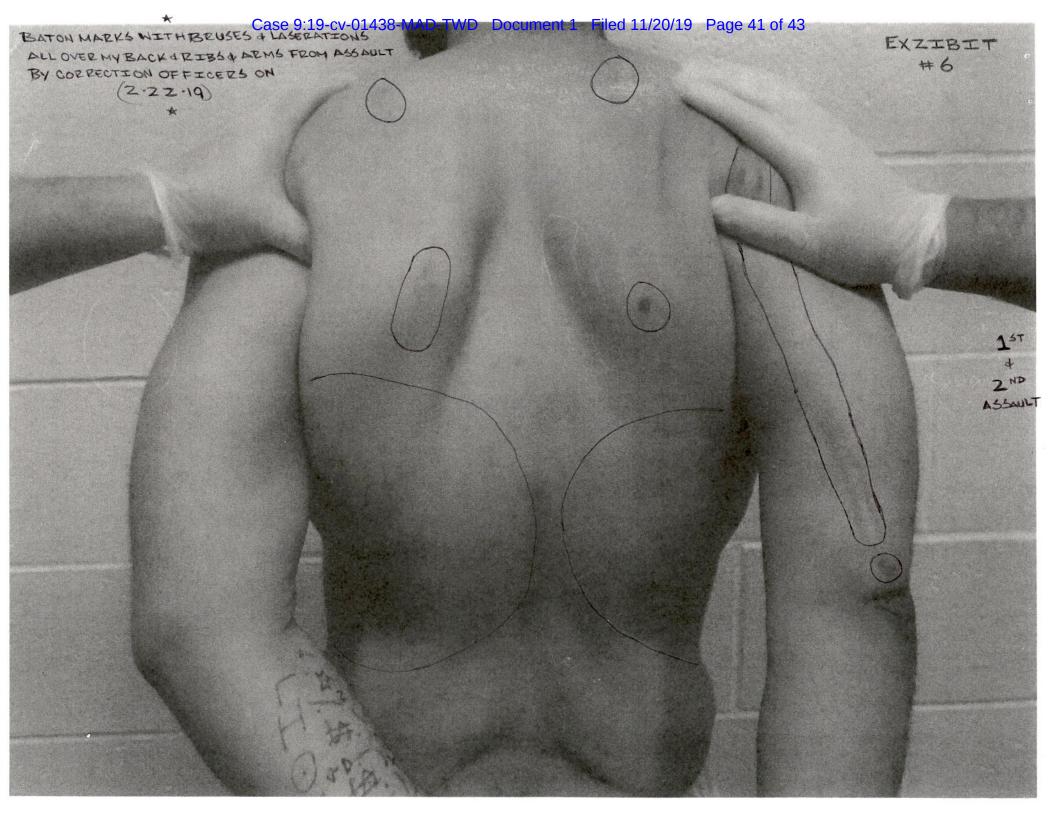


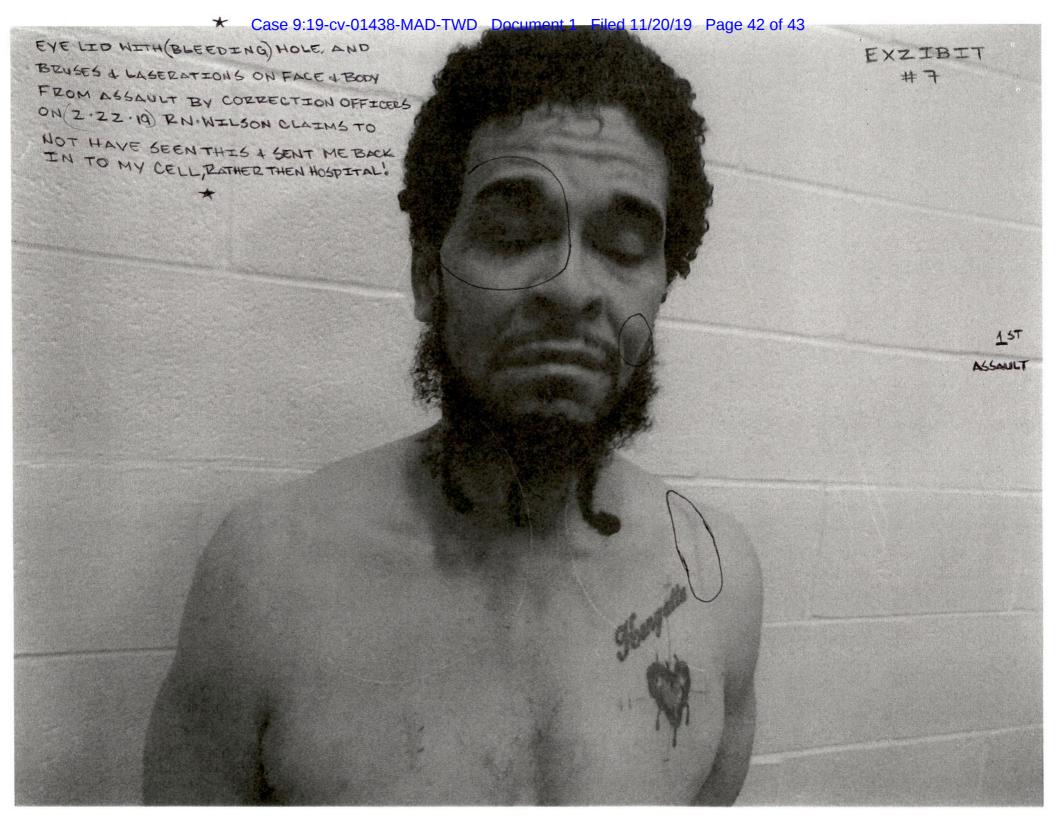












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UNS571 STATE OF N. Y. - DEPARTMENT OF CORRECTIONS AND COMMUNITY SUPERVISION 03/26/19 USE OF FORCE REPORT 11:13:54 UPSTATE SHU UF LOG NO. 190017.00 INCIDENT DATE 02/22/19 TIME 12:45PM UI CCC NO. 274359 GEN LOC. 29 SHU-DISCIPLN SPEC LOC. 10-B1-03B CB LOG NO. DIN/NYSID ETHNIC ROLE DIAZ, MIGUEL 18A2702 HSP PERP HE EXAMINERS NAME TITLE EXAM DATE TIME

PART B - PHYSICAL EXAMINATION/TREATMENT REPORT:

SUPERVISOR REVIEW:

WAS INCIDENT VIDEOTAPED? NO AUTHORIZED BY:

WERE USE OF FORCE PHOTOS TAKEN? YES

WERE USE OF FORCE PHOTOS REVIEWED? YES

WAS INMATE INJURED? WAS INMATE SEEN BY MEDICAL? YES WAS THE UF MEMO COMPLETED? YES WAS THE INMATE RETURNED TO THE CELL? NO TRANSFERED TO: REPORTED BY: SGT T DUNNING

REVIEWED BY: LT G. GETTMANN 

REVIEW AND EVALUATION BY SUPERINTENDENT:

\*

DATE: / /

WAS VIDEOTAPE REVIEWED?

TRANSPORTED TO ALICE HYDE DATE: 02/22/19 DATE: 02/22/19